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U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: EAC 03 075 50010 Office: VERMONT SERVICE CENTER Date: JUL 18 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marin Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time of filing, the petitioner was a postdoctoral fellow at the Institute for Advanced Study in Princeton, New Jersey. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

> burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> [The petitioner] has been doing research that focuses on the theory of computing, algorithms, and their applications to computer networks. . . .
>
> [The petitioner] has advanced the field of theory of computing through his analysis of several computational models and his research on the classification of problems by their computational difficulty. His most important contributions to this area concern innovative proofs of the complexity of lower bounds of computational problems. One of the specific proofs that he is most known for is his demonstration that no space efficient algorithms exist for the problem of approximating max distance of two vectors in the data stream model. [The petitioner's] research discoveries in this area will have an impact on advanced studies of computations for massive data sets.

Counsel claims that the petitioner's "**appointment to the Institute of Advanced Studies** is considered an indication of his **recognition as a distinguished expert in his field**" (counsel's emphasis). While all the evidence will receive due consideration, we are not of the opinion that the reputation of the employer is *prima facie* evidence that the employee qualifies for a waiver. Congress created no blanket waivers for aliens working at institutions above some arbitrary threshold of prestige. Counsel asserts that the petitioner qualifies for a national interest waiver because he "was able to develop new mathematical formulas and algorithms that help to solve memory problems when performing computations with large data sets, improving data stream computations, and performing computer network mapping."

Several letters accompany the petitioner's initial submission. Professor [redacted] of the Institute of Advanced Study School of Mathematics states:

> [The petitioner's] work, centered upon the theory of computing, algorithms and their applications to computer networks, has materially advanced the field of computer theory by elucidating the power of various computational models and the classification of problems by inherent computational difficulty. His essential contribution in this area emanates from his innovative proof of the "complexity lower bounds" of computational problems. . . .

> Computational difficulty of a problem is quantitatively referred to as its complexity measure, expressed as a function of the size of the input to the problem. Among such measures time (number of steps in computation) and space (size of the memory used) are primary. The "space" efficient algorithms are under current and close mathematical study due to the massive data sets being processed in scientific computation . . . as well as expanding international trade and e-commerce. . . . [The petitioner's] successful demonstration that no "space" efficient algorithm exists for the problem of approximating Max distance of two vectors in [the data stream] model now permits researchers to focus on other approaches to handle this problem.

Other witnesses discuss the petitioner's work in varying degrees of technical detail; they generally focus on the petitioner's demonstration that there exists no space-efficient algorithm for Max distance of vectors in large data sets. Professor [redacted] the petitioner's Ph.D. supervisor at Rutgers University, states that the petitioner's discovery that there is no efficient algorithm for Max distance "was an impressive achievement that has gained recognition among our colleagues."

Two witnesses do not indicate any connection to the petitioner through institutions where he worked or studied. Professor [redacted] of the State University of New York at Stony Brook states that the petitioner "has generated an influential record of published work." Professor [redacted] of the University of Minnesota states:

> I am familiar with [the petitioner's] published research, as it is in my field of study. I can say that [the petitioner's] contributions to the field of theory of computing are influential and highly regarded.
>
> [The petitioner] has advanced the field of computer theory through his analysis of several computational models and his research on the classification of problems by their computational difficulty. His most important contribution to this area concerns innovative proofs of the complexity of lower bounds of computational problems. In particular, [the petitioner] successfully demonstrated that no space efficient algorithms exist for the problem of approximating max distance of two vectors in the data stream model. This is a valuable discovery that will have an impact on advanced studies of computations for massive data sets. Large data set models are of critical importance to many areas of modern scientific activity including genetics research, biostatistics, telecommunications, as well as other areas such as finance.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work, but concluding that the petitioner had not "shown that the impact of the beneficiary's individual proposed activities would be national in scope" or that "the national interest of the United States would be adversely affected if a labor certification were required for the beneficiary." The director stated that the evidence in the record does not corroborate the claim that the petitioner's work has been especially influential within his field. The director also noted that the petitioner was not first author of many of his published papers.

The director denied the petition without first issuing a request for evidence. The director cited 8 C.F.R. § 103.2(b)(8), which indicates that a petition may be denied without a request for evidence if the record contains evidence of ineligibility. The director did not identify any evidence of ineligibility. The same cited regulation also indicates that a request for evidence should be issued if there is no evidence of ineligibility and the available evidence is insufficient to support a finding of eligibility. This latter circumstance appears more

closely to mirror the facts of the proceeding at hand. From the construction of the regulation, it is clear that a lack of evidence is not the same thing as evidence of ineligibility.

We agree with counsel that the petitioner's work is, indeed, national in scope. The petitioner's findings concern fundamental issues of computational theory, and these issues have no geographical boundaries. The petitioner conducted his studies at major research institutions and disseminated his findings through national and international publications.

On appeal, counsel states that, in the petitioner's field, the convention is to credit authors in alphabetical order. The materials in the record are uniformly consistent with that assertion. More important than the specific order of author credits, however, is the impact that the published work has had on other scholars in the field. On appeal, the petitioner submits listings from http://scholar.google.com, indicating that five of the petitioner's articles have been cited an aggregate total of 75 times, with the most-cited article showing 45 citations. Counsel observes that these totals do not include self-citations by the petitioner, but the list of articles does include self-citations by the petitioner's co-authors. Even taking this into account, the petitioner has demonstrated heavy citation of his work. The articles that cite his work are listed in order of their own citation frequency; only six of the 75 articles have been cited more than 20 times. The heavy citation of the petitioner's work, together with the independent assessments of the petitioner's work discussed above, corroborates the claim that the petitioner's work has been influential within his field.

Another independent witness statement accompanies the appeal. Professor Stephen A. Cook of the University of Toronto begins by listing his own impressive credentials, including membership in the highly prestigious National Academy of Sciences and its British and Canadian counterparts. Prof. Cook states that the petitioner is "extraordinarily talented," "truly brilliant" and "one of the cutting edge thinkers" in his field. He concludes: "as one of the world's leading experts in the field of computational complexity, I can confirm that [the petitioner's] research advances . . . have been widely recognized as groundbreaking." As noted above, the petitioner has objectively documented this wide recognition, and therefore we need not rely on the statements of individual witnesses to support such a conclusion.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that independent experts in the field recognize the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.